

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ANTHONY A. WHITEHURST

§

V.

§

C.A. NO. C-03-300

§

UNITED STATES, ET AL.

§

ORDER

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983. Defendant's objections to depositions on written questions of Daryl Reed is pending. (D.E. 102).

Defendant lodges numerous objections to specific questions arguing that they are leading and conclusory. Defendant seeks to have the objections to the deposition on written questions granted.

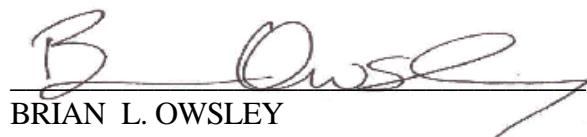
Defendant has an obligation to make any objections to the written questions prior to those questions being posed to the deponent. See Fed. R. Civ. P. 32(d)(3). Indeed, "a party who has not objected to a leading question at the taking of a deposition may not subsequently object to it when the deposition is introduced at the trial." Elyria-Lorain Broad Co. v. Lorain Journal Co., 298 F.2d 356, 360 (6th Cir. 1961). Defendant's objections are noted for the record and preserved for trial. Nonetheless, the plaintiff may proceed with his redirect questions for Mr. Reed.

As has been previously explained, (D.E. 101), the fact that Mr. Reed's deposition may be taken by written questions, however, does not necessarily mean that plaintiff will be able to use that deposition at trial. As the Fifth Circuit has determined, deposition transcripts may be excluded at trial, for example, when they elicit "answers to hypothetical questions which did not reflect the facts in evidence." Neveaux v. Cent. Gulf S.S., 503 F.2d 961, 962 (5th Cir. 1974) (per curiam). Similarly, written deposition questions should be drafted so as to seek specific facts as opposed to conclusory

generalities. See Molignaro v. Dutton, 373 F.2d 729, 731 (5th Cir. 1967). If plaintiff's written questions fail these guidelines, that is a matter for a motion in limine and a subject for the final pretrial conference.

Accordingly, defendant's objections to the redirect questions in the deposition on written questions of Darryl Reed are overruled as premature.

ORDERED this 29th day of November 2005.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE